EXHIBIT 7

"IBM and Software Patents"

http://eupat.ffii.org/gasnu/ibm/#gajn

IBM and Software Patents

Peace-Loving Promoter of the Arms Race



IBM's patent department is actively lobbying Europe to legalise software patents. They have invested millions in fighting example cases to leading European lawcourts such as the EPO's Technical Boards of Appeal and the German Federal Court in order to soften and eventually remove European restrictions on patenting software.

IBM has threatened European politicians that IBM might close down local facilities if software patents are not legalised in Europe. IBM has also prevented the US government from conducting studies on the value of software patents for the national economy.

In the wake of the Opensource hype, IBM has touted "Peace, Love, Linux" and thereby given an impression of détente with respect to its nuclear arsenal of mutually assured destruction.

IBM has acquired several 1000 European software patents whose legal value is unclear. Given the great number of software patents in IBM's hands, IBM is one of the few software companies who may have a genuine interest in software patentability. Once software patents become assertable in Europe, an IBM tax of several billion EUR per year may be levied on European software companies.

In 2010 IBM <u>attacked</u> a European opensource startup with 106 patents.

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Richard Chapman <u>says</u>: "Having IBM at your side in the land of Open Source is sort of like having a large carnivore as a pet. They may play and cuddle with you but you never know if or when they will revert to their natural ways

and have you for lunch."

- <u>Creating Pro-Swpat Caselaw and Lobbying in Europe</u>
- Preventing Investigations in the US
- <u>License income from IBM patent</u> portfolio
- Recently a somewhat Cautious Policy in Europe?
- IBM Patent Movement vs IBM
- IBM afraid of working with GNU/Linux because of the risk of infringing a patent
- <u>IBM E-Patents at the European Patent</u> Office (EPO)

Creating Pro-Swpat Caselaw and Lobbying in Europe

IBM's patent lawyers have fought most of the landmark cases through the European Patent Office (EPO) and the German courts in order to make software patentable in Europe. In 2000, IBM's chief lawyer, Fritz Teufel, pressed a spellcheck patent all the way to the highest court and obtained a (somewhat ambiguous) legalisation of computer program claims. In 1998 IBM obtained the same from the EPO.

Moreover IBM representatives were active in various organisations and lobbied governments to permit software patents. In Sep 2000 The German Informatics Society (Gesellschaft für Informatik) published pro software patent press releases that received authoritative commenting by the association's vice president, Andrea Grimm, who was at the time an IBM manager. When questioned by some critical members of GI, Ms Grimm stated that IBM is against trivial software patents and that software patents can harmoniously coexist with opensource software.



IBM patent department representatives gave

strong statements in favor of software patentability at several meetings at EU and national levels. In private meetings with government officials in 1997/98 they have pressure governments to push the European patent legislation toward official recognition of software patetents and announce that IBM will make its investments in a specific country dependent on that country's government's favorable behavior.

Preventing Investigations in the US

IBM has for many years sponsored the Software Patents Institute, which failed to solve the problem of software prior art while consuming a lot of state and industry money. In 1998, IBM exerted pressure on the Clinton administration to prevent one of the president's advisers from ordering a thourough survey of patent quality and of the effects of the recent expansion of patentability.

Contact

see <u>Aborted Whitehouse Study on Software</u> <u>Patents 1998</u>

License income from IBM patent portfolio

Around 1990, IBM was not aggressively asserting its software patents but rather using them to gain access to key innovations of competitors, as IBM manager Roger Smith explained at the time.

Business Week had an article about how IBM uses its patents to press money out of the American software industry. This amount is enough to build many IBM business centers throughout Europe. The question is only, whether Europe should accept the IBM tax or

not rather do something on its own to foster the development of software.

BIG BLUE IS OUT TO COLLAR SOFTWARE SCOFFLAWS

Business Week: March 17, 1997

. . .

Big Blue holds more software patents than any other company in the world. That's great for bragging rights, but it does little for the bottom line. Now, however, IBM sees money in that trove of intellectual property--and its efforts to collect are making other software companies hopping mad. Lawyers for Big Blue are searching for software companies that it says should be paying royalties but aren't. Over the past several months, IBM has been quietly pursuing patent claims against such wellknown software companies as Oracle, Computer Associates, Adobe Systems, Autodesk, Intuit, and Informix. IBM is also pressing a software claim against computer maker Sequent Computer Systems Inc.

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Now, Reback is hurling charges against IBM similar to those he leveled at Microsoft. "IBM shows up the same way someone might demand protection money," he says. Officials at the companies confirm that IBM has contacted them, but most refuse to talk publicly. Collecting the patent royalties could add millions to IBM's net profits. In 1995--the last year IBM released figures--the company took in \$650 million from royalties on all patents, software and hardware alike. Insiders say that senior managers believe IBM could collect \$1 billion a year from its patents.

When IBM strikes a royalty agreement, it

collects 1% to 5% of the retail price of a product using the covered technology. That's a sliding scale depending on the number of patents involved. If IBM can collect royalties from those companies using its approximately 2,500 U.S. software patents, it could reap almost as much from software as the \$200 million in royalties it gets from PC makers. Reback says he was told IBM asked one software maker to pay \$30 million to \$40 million a year.

Indeed, some folks in the computer and software businesses fear that the whole industry could wind up paying a 1% to 5% tax to IBM. "It's hard to be in the computing business-hardware or software--and not infringe on a couple of dozen IBM patents, if not more," says Greg Aharonian, a patent consultant. Meanwhile, other technology companies are following IBM's lead. Says Richard A. McGinn, president of Lucent Technologies Inc.: "We've seen IBM become much more aggressive, and we are, too."

• Forum

IBM has patented everything from the software to automatically return the cursor to the start of the next line on a computer screen to a state-of-the-art virus-detection program. So far, it has made claims against companies by invoking patents including a spell-check function and techniques for how a database program handles queries and runs on so-called parallel-processing computers.

Software companies aren't eager to settle. Intuit Inc., for one, rejected a patent license deal that IBM offered. Some companies are afraid that paying now will set a precedent, making it harder to say no later. "If we sign up with IBM today, then what happens in three or five years, when the patent agreement expires?" asks Oracle Corp. patent attorney Allen Wagner. With all the skirmishing that lies ahead, this

• +49-89 18979927 dispute is still in Version 1.0.

IBM 2003-01: 3288 US patents in 2002, 10 bn IP royalties in 10 years

An IBM press release about the patent figures of 2002, which celebrates the continued champion position of IBM in patent numbers among the IT companies, with Canon and HP lagging far behind. The article does not disclose how much of the "10 bn IP royalties in 10 years" is due to patents and how much to copyright and other legal titles.

WIRED: IBM Patent Revenues in 2000

Reports license revenue figures but fails to distinguish between patents and copyright:

IBM touted 2,886 patents last year, of which a third -- 962 concepts -- shipped in the form of products. IBM raked in \$1.6 billion in intellectual property license fees last year, according to company spokesman Tim Blair.

Inc.com 01/09: Patent Licensing Strategies

Advises patent departments on when to embark on an aggressive patent enforcement and royalty-collecting strategy and how to get corporate support behind it. In order to profit from patents it is necessary to transform the company and orient it around a patent strategy unit. Names IBM royalty income figures as a success example. Again the figures relate to "IP" and it is unclear how much of this is based on patents.

Reback on IBM's predatory patent practises

The american attorney Gary Reback is known for his role in the procedings against anti-competitive practises by Microsoft. In the 80s, working for Sun Microsystems, he got to know IBM's

European Patent News

- 2010-04-06 IBM attacking opensource startup with patents
- 2010-03 25 <u>Andrew</u>
 <u>Tridgell on Patent</u>
 Defence
- 2010-03-17 <u>EU</u> <u>Prize for Patent</u> <u>Troll of the Year?</u>
- 2010-03-15 <u>EU</u> <u>asked China to</u> <u>enforce patents</u> <u>against open</u> standards
- 2010-03-13 <u>EUPAT March</u> 2010
- 2010-03-13 <u>Jim</u> <u>Bessen: Do</u> <u>Patents Work as</u> <u>Property?</u>
- 2010-03 06 Commissioner
 Geoghegan-Quinn
 committed to
 Community Patent

patent portfolio. 14 IBM lawyers + assistants visited the young firm and asked for 20 million USD without even showing any infringement by Sun. They got what they asked for and proceded to the next victim.

Forbes 2003/08/07: IBM's Path From Invention To Income

According to statistics in this article, IBM spent \$4.75 billion on research and development, and this article suggests, but does not say clearly, that this is turned into profit mainly by means of patent licensing rather than by application development.

But over the last several years IBM has brought research out of the shadows and in front of customers. Much of the focus has been on software, which accounts for 15% of IBM's revenue and one-third of its profits. Software now contributes almost half of its patents, compared with less than 10% five years ago. With more than 22,000 patents in total, IBM has been granted more patents than any company in the world for the past decade. According to Paul Horn, IBM's senior vice president of research, IBM has generated \$1 billion in profit--that's profit, not sales--by licensing intellectual property developed by its researchers.

Recently a somewhat Cautious Policy in Europe?

IBM is one of the few companies in the software area that speak independently and with a certain degree of coherence between the departments about their patent policy.

The speeches by IBM patent law experts such as David Kappos can be astonishing. On 2001-10-20 at a hearing in London, Kappos incurred

the wrath of european patent lawyers by criticising the effects of business method patents and trivial patents on the economy and asking the people from the European Commission not to follow the USA but rather to apply stricter standards of "technical contribution" and non-obviousness. When vocal patent lawyers such as <u>Jürgen Betten</u> protested, saying that IBM was profiting most of all from this system and now apparently "once again, as in the 70s" turning its back on their allies, Kappos responded along the lines of:

For us as a company adjusting to whatever system there is is a question of survival. If the mayor hands out guns to everybody in town, you can bet IBM is going to get some of the best guns. That doesn't mean that we are necessarily in favor of a liberal gun policy.

This did not prevent IBM from factually doing everything to push software patentability in Europe. They merely took a more cautious rhetoric, and it seems that they are, unlike GE and some other american companies, not doing this merely because the patent department follows a patent movement agenda, but also because they do not want their server market to be blocked by business method patents, of which IBM does not have so many yet. This is indeed similar to their motivation to oppose software patents in the 1970s.

Perhaps IBM is not quite united on this issue. In its upcoming <u>UK Patent Orifice</u> rally in Brussels, the British patent movement invited <u>Fritz Teufel</u> instead of David Kappos. As a pure lawyer, Teufel is unlikely to change the hardline views which were the keys of his successes in european courts until now.

IBM Patent Movement vs IBM

Although IBM may be earning substantial revenues from its large collection of trivial software patents, it is not sure that unlimited patentability is in the best interest even of IBM. Patent managment generates costs that were not considered in the above calculations. Specialised litigation companies acquire patents in order to go after giants. IBM could perhaps be even more profitable if it didn't dedicate so much of its ressources to this type of warfare. Building the business strategy on patents is increasingly appearing incoherent with IBM's strong support for opensource software and the significant business it has generated therefrom.

IBM afraid of working with GNU/Linux because of the risk of infringing a patent

In an <u>interview</u> from 2002/02, a leading developper working for IBM explained some aspects of IBM's patent policy and its conflict with the policy of supporting GNU/Linux.

Dr. Karl-Heinz Strassemeyer basically said:

- IBM does not ship any free software that infringes on patents. [1]
- IBM only submits patches to the Linux kernel after a formal procedure of patent clearance
- IBM does not do distributions because the risk of infringing a patent that way is too high.
- IBM does not deploy Linux in embedded systems of devices which it sells because someone might find that the kernel

infringes on a patent and then sue IBM.

As explained above, IBM has become a favorite target of specialised patent litigation companies. IBM attracts such companies more than any small Linux distributor at present.

IBM E-Patents at the European Patent Office (EPO)

This section is currently missing because of a failure to generate the current list from our database backend.

Annotated Links

SmartBusinessMagazine: The Patent King
- IBM Corp.: describes how IBM is using its
patent portfolio to squeeze money out of
companies

Bitkom zu Softwarepatenten: Beiträge zur Bundestags-Anhörung 2001-06-21

Das Referat hielt die Vorsitzende des Arbeitskreises Gewerblicher Rechtschutz, Frau Dr. Katrin Bremer. Anwesend war auch PA Fritz Teufel von IBM, der diesen Arbeitskreis bis vor kurzem geleitet hatte. In ihrem Referat fordert Frau Bremer eine zügige Legalisierung von Softwarepatenten durch Anpassung von Art 52 EPÜ an die Rechtsprechung des Europäischen Patentamtes und meint, die "Opensource-Bewegung" werde es überleben, da sie innovativ sei. In der später eingereichten offenbar von PA Teufel geschriebenen schriftlichen Eingabe heißt es, freie Software sei nicht innovativ und es seien immer die Nachahmer, die das Patentwesen fürchteten.



EICTA

Think Magazine 1990 #5: IBM's Roger Smith about the value of patents

Think Magazine 1990 #5 contains an article which quotes a spokesman from IBM explaining how IBM can use patents to access key innovations of competitors. "You get value from patents in two ways," says Roger Smith, IBM Assistant General Counsel, intellectual property law. "Through fees, and through licensing negotiations that give IBM access to other patents. The IBM patent portfolio gains us the freedom to do what we need to do through cross-licensing--it gives us access to the inventions of others that are the key to rapid innovation. Access is far more valuable to IBM than the fees it receives from its 9,000 active patents. There's no direct calculation of this value, but it's many times larger than the fee income, perhaps an order of magnitude larger."

Patenting: An Idea Whose Time has Gone?

A banker writes that as patent application numbers explode it is becoming increasingly unattractive for small companies to file for patents. They will usually spend a lot of money and in any case have to share their monopoly with large companies who own related patents. Small companies are usually more successful if they instead rely on informal protection shields (product complexity, business secret) and concentrate their energies on quickly moving in the market. Instead of patenting themselves, they should look for a corporate big brother from the start.

EU Patent |

EU Patent | Players | Groups | IBM]

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